

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CONNECTICUT BANK OF
COMMERCE,

Plaintiff,

v.

THE REPUBLIC OF CONGO,

Defendant;

CMS NOMEKO CONGO INC.,

Garnishee.

Civil Action No. 05-762 SLR

JOINT SCHEDULING ORDER

At Wilmington this ____ day of August, 2006, the parties having satisfied their obligations under Fed. R. Civ. P. 26(f); the Court having conducted a pretrial scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. L.R. 16.2(a) and (b); and the parties having further conferred following the pretrial scheduling conference,

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties exchanged their Initial Disclosures on August 10, 2006. Af-Cap provided CMS Nomeco with all documents that are not subject to a confidentiality order in other litigation at that time. CMS Nomeco produced a disk containing its document production at that time. The parties shall produce any remaining documents on or before September 1, 2006.

2. **Discovery.** CMS Nomeco proposes, in line with the Court's typical practice, that the Court hold a discovery conference on _____, 2007 at ____ a.m. / p.m. in Courtroom 6B, Federal Building, 844 King Street, Wilmington, Delaware. No less than 24 hours

in advance of the conference, the parties shall submit a joint report on the status of discovery and any existing areas of dispute.

a. Plaintiff's assignee Af-Cap believes that discovery will be needed on the following subjects:

(1) The payment, transfer or other use of oil royalties to Af-Cap's Judgment Debtor, the Republic of Congo ("Congo"), by CMS Nomeco under an Oil Convention between Congo and CMS Nomeco.

(2) CMS Nomeco's payment of a portion of the same oil royalties to another of Congo's judgment creditors, National Union Fire Insurance Company of Pittsburgh, PA ("NUFI") between 1991 and August 2002 under a Turnover Order issued by the United States District Court for the Northern District of Illinois, or any other use of such royalties.

(3) CMS Nomeco's incorporation and current corporate structure in the State of Delaware and compliance with reporting and filing obligations as a Delaware Corporation.

(4) CMS Nomeco's activities in the United States.

(5) CMS Nomeco's sale to and relationship with its ultimate parent, the French Company, Perenco S.A.

(6) Any defenses to be raised by CMS Nomeco.

b. Garnishee CMS Nomeco believes that discovery will be needed on the following subjects:

(1) The factual bases for allegations and claims made by Af-Cap and related information and documents;

- (2) The bases of Af-Cap's designated experts' opinions;
- (3) The nature and origin of Af-Cap's ownership of the debt at issue;
- (4) Af-Cap's efforts and opportunities to enforce the Judgment at issue or collect on the debt at issue.

3. **Completion of Discovery.** Af-Cap proposes that all discovery shall be commenced in time to be completed by December 16, 2006. CMS Nomeco proposes that all discovery shall be commenced in time to be completed by August 31, 2007.

4. **Interrogatories.** The parties agree that a maximum of 25 interrogatories may be served by each party to any other party.

5. **Requests for Admissions.** The parties agree that no limits will be imposed upon the number of requests for admissions at this time.

6. **Depositions.** Af-Cap proposes that it is entitled to a maximum of 5 depositions and that CMS Nomeco is entitled to a maximum of 2 depositions. Af-Cap further proposes that each deposition, other than Plaintiff's depositions of CMS Nomeco's corporate representative, Congo's Denis Ikama, and Jean-Michel Runacher, shall be limited to a maximum of 7 hours unless extended by agreement of parties or Court order. Furthermore, Af-Cap seeks CMS Nomeco's agreement that depositions requiring the services of a translator shall be extended automatically for an additional 7 hours and may be additionally extended, if necessary. Af-Cap proposes to take a Rule 30(b)(6), Fed. R. Civ. P., deposition of CMS Nomeco's corporate designee or designees as soon as possible. Af-Cap seeks a designee or designees with knowledge of the topics set forth in Section 2 (a)(1-6) *supra*. Depending upon the information

obtained during that deposition, Af-Cap believes that it may need to amend the number of depositions that it seeks in this matter.

CMS Nomeco proposes that the parties shall be entitled to an equal number of depositions and that each deposition shall be limited to a maximum of 7 hours unless extended by agreement of parties pursuant to their conference or by Order of the Court.

7. **Experts.** Af-Cap proposes that reports from retained experts under Rule 26(a)(2) on issues for which any party has the burden of proof shall be served by December 5, 2006 and that rebuttal expert reports shall be served by January 5, 2007.

CMS Nomeco proposes that reports from retained experts under Rule 26(a)(2) on issues for which any party has the burden of proof shall be served by June 29, 2007 and that rebuttal expert reports shall be served by July 27, 2007.

8. **Discovery Disputes.** Any discovery dispute shall be submitted to the Court pursuant to Fed. R. Civ. P. 37. During the course of discovery, each party is limited to two Rule 37 motions. The Court shall make itself available, however, to resolve through a telephone conference disputes that arise during the course of depositions and disputes related to entry of a protective order.

9. **Joinder of Other Parties and Amendment of Pleadings.** Af-Cap proposes that all motions to join other parties and amend the pleadings shall be filed on or before January 5, 2007.

CMS Nomeco proposes that all motions to join other parties and amend the pleadings shall be filed on or before November 17, 2006.

10. **Settlement Conference.** Pursuant to 28 U.S.C. § 636, this matter is referred to Magistrate Judge Thyng for the purposes of exploring ADR.

11. **Summary Judgment Motions.** Af-Cap proposes that summary judgment motions shall be served and filed with an opening brief on or before January 19, 2007. No summary judgment motion may be filed more than 10 days from the above date without leave of the Court.

CMS Nomeco proposes that summary judgment motions shall be served and filed with an opening brief on or before September 28, 2007. No summary judgment motion may be filed more than 10 days before that date without leave of the Court. Responsive briefs shall be due October 19, 2007, and reply briefs shall be due November 2, 2007. To the extent that any party contends that a challenge to the admissibility of expert evidence is relevant to the determination of any summary judgment motion, the party shall file a *Daubert* motion on or before October 12, 2007. Responsive briefs shall be due November 2, 2007, and replies shall be due November 16, 2007. Oral argument shall be heard on summary judgment and *Daubert* motions on _____, 2007 at ____ a.m. / p.m. in Courtroom 6B, Federal Building, 844 King Street, Wilmington, Delaware.

12. **Applications by Motion.** Any application to the Court shall be by written motion filed with the clerk. Unless otherwise requested by the Court, counsel shall not deliver copies of papers or correspondence to chambers. **Any non-dispositive motion shall contain the statement required by D. Del. L.R. 7.1.1.**

13. **Motions *in Limine*.** Af-Cap proposes that all Motions *in limine* and motions challenging the admissibility of proposed expert witness testimony shall be filed on or before January 12, 2007, and that all responses shall be filed on or before January 19, 2007.

CMS Nomeco proposes that the date for motions *in limine* not be set at this time.

14. **Pretrial Conference.** Af-Cap proposes that a pretrial conference will be held on January 29, 2007 at 1:30 p.m. in courtroom 6B, sixth floor Federal Building, 844 King Street, Wilmington, Delaware. The Federal Rules of Civil Procedure and D. Del. L.R. 16.4 shall govern the pretrial conference. During the pretrial conference, the parties will argue any motions for summary judgment, motions *in limine*, and motions concerning the admissibility of proposed expert testimony.

CMS Nomeco proposes that the date for the pretrial conference not be set at this time.

15. **Trial.** Af-Cap proposes that this matter be scheduled for a 3 day bench trial commencing on February 12, 2007 in courtroom 6B, sixth floor Federal Building, 844 King Street, Wilmington, Delaware. For purposes of completing pretrial preparations, the parties will outline the total number of hours in which they will present their respective cases at the Pretrial Conference.

CMS Nomeco proposes that the trial commence on February _____, 2008. CMS Nomeco has reminded Af-Cap that CMS Nomeco has demanded a jury trial of all issues triable by jury.

Sue L. Robinson, C.J.